

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN DURRELL HOLCOMB,

Plaintiff,

No. CIV S-02-2417 LKK KJM P

vs.

HIGH DESERT STATE PRISON, et al.,

Defendants.

ORDER

_____/

The court finds good cause for an evidentiary hearing concerning defendants' motion to enforce the parties' settlement agreement. Accordingly, IT IS HEREBY ORDERED that:

1. An evidentiary hearing is scheduled for Thursday, February 4, 2009 at 2:00 p.m. before the undersigned.

2. Plaintiff shall appear at the hearing via video conference. Defendants' counsel shall make arrangements for plaintiff to appear in this manner. Defendants' counsel and any other witnesses shall appear in the courtroom.

3. The issue to be addressed at the hearing is as follows: whether a line was placed through paragraph 8 of the parties' settlement agreement before or after plaintiff signed the agreement.

////

1 4. From the record, it appears only plaintiff, counsel for defendants and plaintiff's
2 former counsel Brian Chavez-Ochoa are appropriate potential witnesses. No other witnesses will
3 be permitted to testify unless, within twenty-one days, a party shows good cause why another
4 witness should be allowed to testify and presents an affidavit from the proposed additional
5 witness.

6 5. The affidavit presented by counsel for defendant on October 22, 2009 may
7 serve as counsel's direct testimony, if defendants plan to present counsel as a witness. Plaintiff
8 may cross-examine counsel at the hearing, and defendants may present testimony on redirect.

9 6. Within twenty-one days, if plaintiff plans to testify at the hearing, he shall file
10 an affidavit in which he addresses the question presented for the evidentiary hearing. Plaintiff
11 shall not include anything in the affidavit that is irrelevant to the question presented. Plaintiff's
12 affidavit will constitute his direct testimony. Counsel for defendants will be permitted to cross-
13 examine plaintiff at the hearing, and plaintiff will allowed to present testimony on redirect.

14 7. If either party plans to call Brian Chavez-Ochoa as a witness, that party shall
15 arrange for Mr. Chavez-Ochoa's appearance by issuance of a subpoena (with payment of all
16 applicable costs), unless Mr. Chavez-Ochoa agrees to appear voluntarily. If Mr. Chavez-Ochoa
17 will be a witness, the party calling him is directed to submit his direct testimony in the form of an
18 affidavit within twenty-one days. If called, Mr. Chavez-Ochoa will be subject to cross-
19 examination and the party calling him will be provided the opportunity to elicit testimony on
20 redirect.

21 8. The Clerk of the Court shall serve a courtesy copy of this order on Brian
22 Chavez-Ochoa.

23 DATED: January 6, 2010.

24
25
26


U.S. MAGISTRATE JUDGE